

REPORT / RECOMMENDATION



To: City Council

Agenda Item #: IV.C.

From: Ann Kattreh
Parks and Recreation Director

Date: May 21, 2013

Subject: Access Agreement – 6137 Brookview Avenue

Action ☒

Discussion ☐

Information ☐

Action Requested:

Approve the Access Agreement for 6137 Brookview Avenue.

Information / Background:

Paul J. Donnay Three, LLC has requested access over part of Pamela Park to build a home on 6137 Brookview Avenue. The access is requested so that Donnay Homes, the builder, can access the rear of the property for the delivery of construction materials and for landscaping of the back yard.

This Access Agreement is a new form and new process for the Parks and Recreation Department and if approved by Council, staff plans to utilize this agreement for future access requests over park property. The fee of \$300 covers the cost of document preparation by the City Attorney.

Attachments:

Access Agreement – Paul J. Donnay

Site Plan – 6137 Brookview Avenue

ACCESS AGREEMENT

This Access Agreement ("Agreement") is made on this _____ day of May, 2013 by and between the **CITY OF EDINA**, a Minnesota municipal corporation ("City") and **PAUL J. DONNAY THREE, LLC**, a Minnesota limited liability company, its agents and contractors ("Donnay").

Recitals

A. Donnay is the owner of property at 6137 Brookview Avenue in Edina legally described as Lot 15, Block 24, Fairfax Addition, Hennepin County, Minnesota ("Subject Property"). Donnay has entered into an agreement to sell the Subject Property, demolish the existing single family home and construct a new single family home on the Subject Property for the buyer ("Project").

B. In conjunction with the Project, Donnay has requested a permit from the City to access the Subject Property over part of Pamela Park, which is owned by the City ("City Property") in accordance with the attached Exhibit "A" ("Approved Access Route").

NOW THEREFORE, IN CONSIDERATION OF THEIR MUTUAL COVENANTS, THE PARTIES AGREE AS FOLLOWS:

1. In conjunction with the Project, City hereby grants to Donnay, its agents and subcontractors, a temporary right of access, over and across the Approved Access Route in accordance with this Agreement. Rights of access granted under this Agreement are subject to further restrictions and limitations as determined necessary by the City, in its sole discretion. This Agreement shall expire when the Project has been completed or September 15, 2013, whichever first occurs. The City may, however, terminate this Agreement immediately for violations of the terms of this Agreement.

2. Donnay shall pay to the City an access fee of \$300.

3. Donnay must furnish the City a cash escrow of Two Thousand Five Hundred (\$2,500) Dollars. If the City draws on the cash escrow, upon the City's demand Donnay must deposit in escrow additional funds to restore the escrowed amount to Two Thousand Five Hundred (\$2,500) Dollars. The cash escrow must remain in place during the term of this Agreement and until all repair and restoration work, if any, has been satisfactorily completed. This escrow is in addition to any required escrow for a demolition permit or building permit.

4. Donnay must comply with all City ordinances, including obtaining a demolition permit and building permit for the Project. This Access Agreement does not constitute Project approval.

5. Donnay may not damage City Property, including the Approved Access Route, and may not remove or damage trees, shrubs, plants or grass on the City Property or Approved Access Route. If any damage occurs, Donnay will promptly restore the property to its original condition to the City's satisfaction. If the damage is not fixed to the City's satisfaction, the City may draw down the escrowed funds and restore the property.

6. Donnay agrees to indemnify, defend and hold harmless the City and its officers, employees, and agents ("Indemnified Parties") from and against all cost, loss, claim, damage or expense arising out of (i) any injury, property loss or damage whatsoever that results or arises from the undertakings of Donnay on the Subject Property, except to the extent such injury, loss or damage arises solely from the negligence of the Indemnified Parties, and (ii) any work performed on or for the benefit of the Subject Property by a person or entity not a party to this Agreement, including, without limitation, all costs related to defense against or removal of any lien or encumbrance, except to the extent such claim arises from a party directly engaged by the Indemnified Parties.

7. Donnay shall not cause or allow to be filed any liens or encumbrances on any portion of the Subject Property to which Donnay is afforded access under this Agreement.

CITY OF EDINA

By: _____
James Hovland, Mayor

By: _____
Scott Neal, City Manager

PAUL J. DONNAY THREE, LLC

By: _____
Its _____

